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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM FRANCIS FRIERY,

Defendant and Appellant.

D075124

(Super. Ct. No. SCD145514)

APPEAL from an order of the Superior Court of San Diego County, Michael T. Smyth, Judge. Affirmed.

William Francis Friery, in pro. per.; and Sheila O'Connor, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In 2000, a jury convicted William Francis Friery of one count of residential burglary and found a firearm allegation to be true (Pen. Code,¹ §§ 459 and 12022.5, subd. (a)(1)); one count of first-degree robbery and found the firearm allegation to be true

¹ All further statutory references are to the Penal Code unless otherwise specified.

(§§ 211 and 12022.53, subd. (b)); and one count of possession of a firearm by a felon (§ 12021, subd. (a)(1)). Friery admitted a prison prior (§ 667.5, subd. (b)), a serious felony prior (§ 667, subd. (a)(1)), and twelve serious/violent felony (strike) prior convictions (§ 667, subds. (b)-(i)). The court sentenced Friery to an indeterminate term of 25 years-to-life plus five years for the serious felony prior and 10 years for the firearm enhancement under section 12022.53, subdivision (b).

In 2018, Friery filed a "Motion to Vacate the Judgment and/or Petition for Writ of Error Coram Nobis." The trial court denied the motion/petition by written order.

Friery filed a timely notice of appeal.

Appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) indicating she has not been able to identify any arguable issue for reversal on appeal. Counsel asks this court to review the record for error as mandated by *Wende*. We offered Friery the opportunity to file his own brief on appeal. Friery has responded with a lengthy supplemental brief which repeats his arguments in the trial court and discusses materials outside this record. We will address his brief below.

DISCUSSION

In his motion/petition, Friery offered several arguments in support of his request to vacate the judgment. He contended his 1991 guilty pleas to 12 serious felonies should have only been treated as a single strike for his sentencing in 2000. Friery also argued the 10-year term imposed for the firearm use under section 12022.53, subdivision (b) only applied to active gang members, although there is no such limitation in the statute. From those arguments, Friery contended his sentence was unauthorized and should be

vacated. The trial court rejected all of his contentions in a written order and denied the motion/petition.

Friery continues to maintain he only had one serious felony conviction following his 1991 plea agreement. Thus, he continues, when convicted in 2000 he should have only had one strike prior notwithstanding his 12 prior convictions for residential burglary. He continues to confuse terms.

In 1991, he acquired one serious felony prior (§ 667, subd. (a)). That is because all 12 burglaries were charged and tried in a single case. Further, the Three Strikes law (§ 667, subds. (b)-(i)) had not yet been enacted in 1991. However, by the time of his 2000 offense he still had 12 residential burglary convictions which were "strikes" after the law was passed. Thus, at the time of the latest offense he was a person with twelve serious/violent prior convictions, but only one serious felony (5-year prior). Further, Friery appealed from his 2000 conviction and this court affirmed his conviction and sentence. (*People v. Friery* (Nov. 26, 2001, D036182) [nonpub. opn.])

Friery's supplemental brief has not raised any arguable issues for reversal on appeal.

As we have noted, appellate counsel has not discovered any arguable issue for reversal on appeal and has asked this court to review the record for error. In order to assist the court, and in compliance with *Anders v. California* (1967) 386 U.S. 738 (*Anders*) counsel has identified the following possible issue: whether the trial court abused its discretion in denying Friery's motion for writ of error coram nobis and vacate judgment.

We have reviewed the entire record as mandated by *Wende* and *Anders*. We have not discovered any arguable issue for reversal on appeal. Competent counsel has represented Friery on this appeal.

DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

HALLER, J.

GUERRERO, J.